

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

On June 28, 2012, plaintiffs filed a civil rights complaint ("Complaint"). The Complaint is a revised version of a complaint previously filed by plaintiff Marianne Stahl ("Stahl") in an earlier case in this district, Case No. SACV 11-00260-RGK (MAN) (the "Prior Action").¹ The Prior Action was dismissed, without prejudice, for failure to prosecute after Stahl failed to timely file an amended complaint as ordered by United States District Judge R. Gary Klausner.

1 On July 2, 2012, United States Magistrate Judge Margaret A. Nagle
2 issued an "Order Re Civil Rights Case" ("July 2 Order"). The July Order
3 expressly advised plaintiffs that they: "must serve the summons and
4 complaint on all named defendants in this action within 120 days of the
5 filing date of the Complaint, which was June 28, 2012"; and "are
6 required to file with the Court a proof of service for each defendant
7 served, within 15 days of the completion of service of process for each
8 such defendant." The July 2 Order cautioned plaintiffs that:

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10 If service is not completed within 120 days of the Complaint's
11 filing date, the Court may dismiss the action in whole or
12 against unserved defendants. Rule 4(m), Federal Rules of
13 Civil Procedure. Service of the summons and complaint must
14 comply with the provisions of Rule 4, Federal Rules of Civil
15 Procedure.

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17 Thereafter, plaintiffs did not file a proof of service with respect
18 to any defendant, nor did they give any indication that they were
19 prosecuting this case. No defendant has appeared. The period for
20 serving the defendants in this case expired on October 26, 2012,
21 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

22
23 On November 21, 2012, Magistrate Judge Nagle issued an Order To
24 Show Cause regarding the possible dismissal of this action based on the
25 expiration of the Rule 4(m) deadline and the lack of any evidence that
26 plaintiffs had attempted to serve the defendants with process ("OSC").
27 The OSC reminded plaintiffs of the Rule 4(m) deadline and the
28 possibility of a dismissal for failure to serve the defendants with

1 process. The OSC advised plaintiffs that, if they established good
2 cause for their failure to serve the defendants on a timely basis, this
3 action might not be dismissed, but cautioned them that the failure to do
4 so would cause the case to be dismissed. In particular, the OSC stated:

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6 **[B]y no later than December 10, 2012, plaintiffs are ORDERED**
7 **TO SHOW CAUSE** why this action should not be dismissed,
8 pursuant to Rule 4(m), based on their failure to serve the
9 defendants with process.

10
11 **Plaintiffs are cautioned that a failure to timely**
12 **respond to this Order to Show Cause and to**
13 **establish good cause for their noncompliance with**
14 **Rule 4(m) will result in a recommendation that this**
15 **action be dismissed.**

16
17 (OSC at 2; emphasis in original.)
18

19 On December 14, 2012, plaintiffs filed a response to the OSC
20 ("Response"). The Response addresses complaints about what appear to be
21 code enforcement activities related to Stahl's home.² The Response is
22 entirely devoid of any explanation for plaintiffs' failure to attempt to
23 serve the defendants with process in this case.

24
25 ² The Court takes judicial notice that, on August 2, 2012, Stahl
26 and Bureau filed a Notice of Removal with respect to an Orange County
27 Superior Court action brought by the City of Dana Point against Stahl
28 (but not Bureau) to appoint a receiver to take possession of Stahl's
home due to her alleged failure to comply with notices and orders to
repair based on violations of state and local laws. See Case No. SACV
12-1247-CJC (RNBx). On October 10, 2012, United States District Judge
Cormac J. Carney remanded the case to state court.

1 Rule 4(m) provides that, if service of the summons and complaint is
2 not made upon a defendant within 120 days of filing the complaint,
3 federal district courts have the authority to *sua sponte* dismiss an
4 action without prejudice, after notice to the plaintiff. If, however,
5 a plaintiff shows good cause for the failure to serve the complaint
6 within that time frame, the Court must extend the time for accomplishing
7 service. Fed. R. Civ. P. 4(m); see also Muhammed v. Department of
8 Treasury, 1998 WL 986245, at *3 (C.D. Cal. Nov. 19, 1998). The burden
9 of establishing good cause is on the plaintiff. *Id.*, at *4. The "good
10 cause" exception to Rule 4(m) applies "only in limited circumstances"
11 and is not satisfied by "inadvertent error or ignorance of the governing
12 rules." Hamilton v. Endell, 981 F.2d 1062, 1065 (9th Cir. 1992); see
13 also Townsel v. County of Contra Costa, 820 F.2d 319, 320-21 (9th Cir.
14 1987) (holding that ignorance of Rule 4 is not good cause for untimely
15 service and affirming dismissal under Rule 4(m), even though the statute
16 of limitations had run, and thus, the dismissal effectively was with
17 prejudice).

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19 By the July 2 Order, plaintiffs were clearly advised of their
20 obligation to effect service of process within the Rule 4(m) deadline
21 and in compliance with Rule 4's requirements. Moreover, by that same
22 Order, plaintiffs were expressly notified that dismissal of this action
23 could occur if they failed to complete service of process within the
24 Rule 4(m) deadline. The subsequent OSC confirmed this advice and,
25 further, explicitly advised plaintiffs that, if they want this action to
26 continue, they were required to establish good cause for their failure
27 to effect service of process within the Rule 4(m) deadline in their
28 response to the OSC. Plaintiffs have ignored this repeated advice and

1 have failed to provide any cause -- much less good cause -- for their
2 failure to prosecute this action by serving the defendants.

3
4 "Pro se litigants must follow the same rules of procedure that
5 govern other litigants." King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
6 1987); see also Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (*per*
7 *curiam*) (failure of *pro se* litigant to follow procedural rules justified
8 dismissal of civil rights action). Given the explicit advice provided
9 to plaintiffs through the July 2 Order and the OSC, and the non-
10 responsive submission filed following the Court's issuance of an OSC,
11 there is no apparent cause for plaintiffs' failure to prosecute this
12 action by attempting to serve the defendants. See Wei v. State of
13 Hawaii, 763 F.2d 370, 372 (9th Cir. 1985) (*per curiam*) (opining that Rule
14 4(m)'s 120-day time limit "is intended to force parties and their
15 attorneys to be diligent in prosecuting their causes of action," and
16 because plaintiff did not contend that he attempted to serve defendants,
17 was confused about the requirements of service, or was prevented by
18 effecting timely service by factors beyond his control, a dismissal for
19 failure to serve process was justified, even though plaintiff's claim
20 therefore became time-barred). Indeed, given that the Prior Action was
21 dismissed due to plaintiff Stahl's failure to prosecute, it was
22 incumbent upon her to prosecute this action diligently, which she has
23 not done. Under these circumstances, there is no basis for extending
24 the expired Rule 4(m) period, and under Rule 4(m), dismissal of this
25 action, without prejudice, is warranted.


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1 Accordingly, IT IS ORDERED that Judgment be entered dismissing this
2 action, without prejudice, for failure to effect service of process in
3 compliance with Rule 4(m) of the Federal Rules of Civil Procedure.

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5 DATED: February 25, 2013.

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7 
8 JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

9 PRESENTED BY:

10 
11 MARGARET A. NAGLE
12 UNITED STATES MAGISTRATE JUDGE